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January 27, 2004

VIA FACSIMILE AND FIRST CLASS MAIL

Andrew C. Byrnes, Esq.
Heller Ehrman White & McAuliffe LLP
275 Middlefield Road
Menlo Park, CA 94025-1706

Re: *Overture v. Google*

Dear Andrew:

I write in response to your letter of today.

As a general matter, I remind you of your obligation to make a good faith effort to meet and confer prior to "seeking the Court's assistance" on discovery matters. Overture's repeated insistence that Google respond to its letters within a few days (or most recently, by noon the next day) does not satisfy that obligation. Accordingly, if Overture continues to unilaterally set unreasonable deadlines for Google's responses and files a motion to compel on that basis, please be on notice that Google will seek sanctions for Overture's failure to meet and confer in good faith.

As to the damages discovery issue, as I stated on the phone yesterday, it is going to take some time to assess the amount of discovery that is responsive to Overture's request. Therefore, we will not be specifying a "date certain" for production by noon tomorrow, but will respond as soon as reasonably possible. I remind you that Google is, understandably, focusing on its claim construction brief which is due this Friday; a task which Overture's last-minute changes to its proposed constructions has made far more onerous.

In sum, in the spirit of cooperation and mindful of our obligation to contribute to the efficient conduct of this litigation, I hope that we can continue to address our respective discovery concerns and disputes in a reasonable manner.

Andrew C. Byrnes, Esq.
January 27, 2004
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If you have further questions or concerns, please do not hesitate to contact me at (415) 391-5400.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Christine P. Sun', with a stylized, flowing script.

CHRISTINE P. SUN

CPS/lhl